THE LIBRARY OF CONGRESS

OVERVIEW

The Library of Congress (Library), originally established to purchase books for the use of Congress, is today the national library. Under its aegis are the Congressional Research Service (CRS), which provides nonpartisan research, analysis, and information to Congress, and the Office of the Register of Copyrights, which receives and registers copyrightable works. The Librarian of Congress, who serves as head of the agency, is appointed by the President with the advice and consent of the Senate.

Although the Library is part of the legislative branch, Library employees enjoy general civil service protections in a number of areas.[1] Additionally, Library employees now enjoy rights and protections under most of the eleven laws that are the subject of this study, and principal remaining gaps in coverage -- *e.g.*, in the areas of occupational safety and health, notification of office closings and mass layoffs, and polygraph protection -- will be filled when certain CAA provisions become effective at the Library one year after this study is transmitted to Congress.

With respect to independent administrative mechanisms, the Library is not subject to the jurisdiction of the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board (MSPB), or the Office of Special Counsel (OSC), as are executive branch agencies and GPO; nor does the Library have its own personnel appeals board as does GAO. Thus, Library employees' complaints of discrimination or challenges to adverse actions are not subject to administrative appeal beyond the final decision of the Librarian. In the labor-management area, however, the Library, like GPO, is subject to regulation by the Federal Labor Relations Authority (FLRA).

The Library has established several internal administrative mechanisms to hear and resolve employee grievances. Over 70 percent of the Library employees are covered by collective bargaining agreements and are eligible to use the negotiated grievance procedures provided in

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[1] For example, the Library is covered under certain government-wide civil service provisions including classification and grading of positions, premium pay, and flexible work schedules, and under a specific mandate that Library employees be appointed solely with reference to fitness. *See* 2 U.S.C. 140; 5 U.S.C. 5102(a)(1)(B), 5541(1)(D), 6121(1). Regulations issued by the Librarian (Library of Congress Regulations, or LCRs) and collective bargaining agreements establish requirements in such areas as merit hiring, retention and promotion, performance evaluation, and reduction in force. *See, e.g.*, LCR 2013 and 2017 series (performance evaluations, quality increases and incentive awards); LCR 2021-2 (reductions in force); Collective Bargaining Agreements between the Library and AFSCME Local 2477, AFSCME Local 2910, and Congressional Research Employees Assoc., IFPTE Local 75.

ANTI-DISCRIMINATION LAWS

Substantive Rights

The Library, like GAO and GPO, is covered under section 717 of Title VII, section 15 of the ADEA, the EPA, and section 509 of the ADA,[1] and is not subject to section 501 of the Rehabilitation Act.[2] The substantive rights and protections afforded Library employees under these laws therefore parallel those afforded GAO and GPO employees.

Unlike either GAO or GPO, the Library is not included under the prohibition in applicable civil service statutes against prohibited personnel practices.

Procedures

Administrative

Unlike the situation at either GAO or GPO, applicable statutes authorize the Librarian to exercise the authorities of the EEOC with respect to employment at the Library.[3] Consequently, the Librarian has sole administrative responsibility for assuring that employment at the Library is free from discrimination, and is subject to neither the requirements prescribed by the EEOC for agency anti-discrimination programs, nor to the EEOC's authority to hear appeals from the Library's decisions on discrimination complaints.[4]

The Library Discrimination Complaint Process. Library regulations establish an Equal Employment Opportunity Complaints Office (EEOCO) to administer a process for resolving

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1 42 U.S.C. 2000e-16 (Title VII); 29 U.S.C. 633a (ADEA); 29 U.S.C. 203(e)(1)(A)(v), 206(d) (EPA); 42 U.S.C. 12209 (ADA).

2 The Library has advised that section 501 of the Rehabilitation Act, 29 U.S.C. 791(b), applies to the executive branch, and, as an agency in the legislative branch, it is not included.

3 Title VII and the ADEA both provide that "authorities granted in this subsection to the [EEOC] shall be exercised by the Librarian of Congress." 42 U.S.C. 2000e-16(b); 29 U.S.C. 633a(b). The ADA also provides for implementation by the Librarian. 42 U.S.C. 12209(2), (5). The FLSA, of which the EPA is a part, is ordinarily implemented by the Secretary of Labor, but, under the authority of 29 U.S.C. 204(f), the Secretary in 1975 entered into an agreement with the Librarian under which the Librarian makes necessary investigations and handles complaints from Library employees. The Secretary's functions with respect to the EPA were transferred to the EEOC by Reorg. Plan No. 1 of 1978, 5 U.S.C. appendix.

4 *See* 29 C.F.R. 1614.103(d)(3) (EEOC regulations).

complaints against the Library.[1] Under the individual complaints process, an employee must request counseling within 20 workdays after the allegedly unlawful conduct. The EEOCO provides counseling, conducts an inquiry, and may refer the matter to the appropriate Library officer.

If the matter is not resolved at this early stage, the employee may file a complaint with the EEOCO Assistant Chief, who again attempts to resolve the issues and, if the issues are still not resolved, the EEOCO conducts an investigation and the Assistant Chief decides the merits and makes a recommendation to the Chief of the EEOCO for decision. If the employee complainant, the staff member charged with having discriminated,[2] or both, remain unsatisfied, they may ask for reconsideration and/or a hearing. The Library then provides a hearing officer with the investigative file, and after the hearing (which is considered "an adjunct" of the investigation), the hearing officer renders an advisory opinion. After receiving the hearing officer's advisory opinion, the Librarian makes the final agency decision. The procedure for class complaints is similar, but allows longer periods for filing such complaints with the EEOCO.

The Dispute Resolution Center. The Library also has a Dispute Resolution Center, which offers mediation and other dispute resolution services to both bargaining unit members and nonmembers. At any time during the dispute resolution process, a "disputant" may opt out of the dispute resolution process and file an EEO complaint.

The Library Negotiated Grievance Procedures. Members of bargaining units may also grieve claims of unlawful discrimination under the negotiated grievance procedures established under collective bargaining agreements.

Judicial

Civil Action. Library employees, like those at GPO, have the right to file a civil action to the full extent provided under the anti-discrimination laws. A Library employee may file a civil action after having filed a complaint and after having reached either of two stages in the administrative processing of the complaint: *(i)* after 180 days from filing a complaint in the Library process if there has been no final agency decision; or *(ii)* within 90 days of receipt of a final agency decision from the Librarian.[3] In the case of an EPA complaint, the employee may file a civil action

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[1] The procedures apply, by their terms, to complaints under Title VII, the ADEA, and the ADA. The Library's regulations establishing its procedures for discrimination complaints make no reference to actions under the EPA.

[2] LCR 2010-3.1, sections 9 and 10, make "the staff member charged" a party to the complaint and hearing process. There is no similar provision in EEOC regulations, 29 C.F.R. part 1614.

[3] LCR 2010-2 at 2 (February 23, 1973) and LCR 2010-3.2, section 17 (April 20, 1983) each specify a deadline for filing a civil action of no later than 30 days after receipt of notice of final

(continued...)

regardless of whether he or she has pursued any administrative complaint processing.[1]

As explained in the sections on GAO and GPO, a jury trial may be requested in civil actions under Title VII or the ADA if the plaintiff seeks compensatory damages, but a jury trial is not available in an EPA action, and probably not in an ADEA action, brought against a federal agency. Library employees, like GAO and GPO employees, may not be able to bring a civil action in case of retaliation for exercising ADEA or ADA rights. However, as retaliation is forbidden under applicable Library regulations,[2] Library employees may seek protection through available administrative procedures.

Relief

The relief available in a discrimination case brought by a Library employee is the same as for a GAO or GPO employee, and is generally the same as is available to other legislative branch employees covered under the CAA. In appropriate cases, this may include reinstatement or hiring, with or without back pay, or other injunctive relief.[3] In addition, in a case under Title VII or the ADA, compensatory damages may also be available for intentional discrimination,[4] and in a case under the EPA, double damages may be available as liquidated damages, unless the

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[3] (...continued)
action. That time limitation was expanded to 90 days in the 1991 Amendments to Title VII. Pub. L. No. 102-166, section 114(1).

[1] 29 U.S.C. 216(b) (right to file a civil action under the FLSA, of which the EPA is a part); 29 C.F.R. 1614.409 (EEOC regulations).

[2] *See* LCR 2010-3.2, section 9.

[3] In case of a violation of Title VII or the ADA, the following relief may be available to a Library employee: Enjoining unlawful employment practices, ordering that such affirmative steps be taken as may be appropriate, including reinstatement or hiring, with or without back pay, or any other equitable relief as may be deemed appropriate. Interest may be awarded to compensate for delay in payment. *See* 42 U.S.C. 2000e-5(g); 42 U.S.C. 2000e-16(d); 42 U.S.C. 12209(5). In case of a violation of the ADEA, the relief available to a Library employee is such legal or equitable relief as will effectuate the purposes of the ADEA. 29 U.S.C. 633a(c). In case of a violation of the EPA, a Library employee may recover any amounts withheld from an employee in violation of EPA requirements. 29 U.S.C. 216(b).

[4] 42 U.S.C. 1981a affords compensatory damages for intentional discrimination in violation of Title VII or the ADA. In such a case, compensatory damages for future pecuniary losses, emotional pain and suffering, and other nonpecuniary losses are capped at no more than $300,000.

employer shows that its act or omission was in good faith.[1]

[1] *See* 29 U.S.C. 206(d)(3), 216(b), 260.

these agreements. Grievances that cannot be resolved informally may be submitted to binding arbitration, with appeal to the FLRA, or, if the objection is to an appealable adverse action or performance-based action, judicial review may be obtained in the United States Court of Appeals for the Federal Circuit.[1]

The Library has also established a discrimination complaints process available for the discrimination complaints of both members and non-members of bargaining units, and administrative grievance procedures under which non-members of bargaining units may present other kinds of grievances to Library management and may appeal from adverse actions.[2] These procedures provide for the presentation of grievances and appeals for consideration by management, the opportunity for a hearing before an independent hearing officer, and a final, non-appealable decision by the Library. In addition, the Library has recently established a Dispute Resolution Center to administer mediation and other alternative dispute resolution mechanisms to resolve discrimination complaints, grievances, and certain other kinds of disputes, before resorting to the more formal complaints and grievances procedures.[3] The processes administered by the Dispute Center were established after collective bargaining and are available to both bargaining unit members and non-members.

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1 *See generally*, 5 U.S.C. 7121-7122, 7703.

2 *See* LCR 2020-1, "Grievances, Adverse Actions, Appeals: Policy and General Provisions" (April 10, 1990); LCR 2020-2, "Policy and Procedures for Resolving Grievances" (March 1, 1984); LCR 2020-3, "Policies and Procedures Governing Adverse Actions" (March 1, 1984); LCR 2020-4, "Hearing Procedures" (March 1, 1984).

3 *See* LCR 2020-7, "Policy and Procedures for Using the Alternative Dispute Resolution Process to Resolve Disputes" (June 16, 1995).

ANTI-DISCRIMINATION LAWS

EVALUATION

Substantive Rights and Protections

At the Library, as at GPO and GAO, the basic prohibitions against discrimination under the anti-discrimination laws (Title VII, ADEA, ADA and EPA) are generally the same as those afforded other federal sector employees, those in the private sector, and other legislative branch employees covered by the CAA.

Procedures

The administrative and judicial procedures available to Library employees with discrimination complaints are generally similar to those available to employees of GAO, GPO, and the executive branch, except that Library employees have no right of administrative appeal from the final decision of the employing agency.

Administrative

The administrative procedures applied by the Library are generally similar to those at GPO and GAO and in the executive branch. The Library plays the predominant role in administering the initial counseling, mediation, investigation, and investigative hearing, and the final decision is made by the Librarian. There is no administrative appeal from the Librarian's final decision. By contrast, legislative branch employees covered by the CAA have the right to counseling, mediation, and adjudicatory procedures administered by the independent Office of Compliance, and may appeal to the independent Office of Compliance Board.

The discrimination complaints procedure at the Library includes a mechanism for the investigation of individual complaints, conducted by the Equal Employment Opportunity Complaints Office. Unlike at the GAO, GPO, and executive branch agencies, however, no independent administrative authority has the power to take enforcement action at the Library by conducting investigations without a charge or by seeking corrective action, stays, or disciplinary action. Under the CAA, there is no investigatory or prosecutorial authority in discrimination cases.

Judicial

Employees at the Library have the same right as executive branch employees to file a civil action under anti-discrimination laws at various times after filing an administrative complaint, or, in the case of an ADEA or EPA claim, as an alternative to filing an administrative complaint. After exhausting their administrative remedies, Library employees retain the right to file a civil action in federal district court and have a trial *de novo*. A jury trial is available in cases under Title VII and the ADA, but probably not under the ADEA and EPA.

For private sector employees and covered legislative branch employees under the CAA, the right to file a civil action and obtain a jury trial is generally available in discrimination cases. However, under the CAA, a covered employee who elects to pursue an administrative, rather than judicial, complaint may obtain only appellate judicial review in the Court of Appeals for the Federal Circuit, after exhausting administrative remedies.

Library employees have access to federal district court in claims of retaliation under Title VII and EPA, but the law is uncertain with respect to ADEA and ADA violations. By comparison, covered legislative branch employees are protected by section 207 of the CAA, which prohibits retaliation for exercise of rights with respect to any CAA law, including the anti-discrimination laws; and private sector employees are protected under specific anti-retaliation provisions in these laws.

Relief

Most kinds of relief available for discrimination violations are the same for Library employees as for other legislative branch employees covered under the CAA, as well as executive branch and private sector employees. However, two kinds of damages are available to private sector employees and under the CAA that are not available to Library employees: *(a)* compensatory damages for discrimination involving race, ancestry, and ethnicity, under 42 U.S.C. 1981; and *(b)* liquidated damages in the case of a willful violation of the ADEA, in an amount equal to the amount owing as a result of the violation.

In addition, certain punitive damages and penalties are available against private sector employers in Title VII and ADA cases that are not available against federal government employers, including employing offices under the CAA, in the executive branch, and the Library.

Timeliness in Resolving Discrimination Complaints

Employee representatives — and the Library itself — expressed concern about the slowness of discrimination complaint processing at the Library. The Library reported that, in Fiscal Year 1993, the latest year for which it has compiled data, the average time that formal complaint cases remained open was 1,231 days. The time to complete investigations was 618 days. In the Dispute Resolution Center program, disputes remained in the process for an average of 449 days.

FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

Substantive Rights

The Library, like both GAO and GPO, is covered by the civil service provisions of the FMLA[1] and by OPM's FMLA regulations,[2] which are described in the section of this study on GAO. The Library has also issued a regulation that implements the rights and procedures under the statute.[3]

Procedures

The FMLA civil service provisions do not provide any administrative or judicial processes by which employees may seek redress for violations. Therefore, employees who believe their rights have been violated must rely on the various remedial provisions available generally for employment-related disputes in the federal government. Several administrative and judicial avenues are available to Library employees.

Administrative and Negotiated Grievance Procedures. Library employees may use the Library's dispute resolution process, referred to above. Furthermore, a member of a bargaining unit at the Library can seek resolution of a claim under the negotiated grievance procedure, and a non-member may proceed under the administrative grievance or appeals procedures established by the Library.

OPM's General Claims Settlement Process. A Library employee can also seek redress by applying to OPM under its statutory responsibility to receive and settle federal employees' claims against the government.[4]

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[1] 5 U.S.C. 6381-6387, added by Pub. L. No. 103-3, title II, 107 Stat. 19 (Feb. 5, 1993). Coverage of the FMLA civil service provisions includes, among others, most employees of agencies headed by Presidential appointees. *See* 5 U.S.C. 2105(a)(1)(A), (D), 6301(2)(A), 6381(1)(A). The Librarian of Congress is appointed by the President.

[2] 5 C.F.R. 630.1201-630.1211 (regulations promulgated by OPM).

[3] LCR 2015-21, "Family and Medical Leave" (May 1996).

[4] The authority to settle claims against the government has historically been assigned to GAO under 31 U.S.C. 3702. However, the Legislative Branch Appropriations Act, 1996, transferred this claims settlement authority to OMB as of June 30, 1996, subject to delegation. Sec. 211, Pub. L. No. 104-53, 109 Stat. 535-536 (1995), set out at 31 U.S.C. 501 note.

(continued...)

Judicial

In appropriate cases, a Library employee, like a GAO employee, may also bring suit in the Court of Federal Claims for money owed by the government as a result of an FMLA violation, and could seek restoration to position and correction of records, if warranted, as an incident to a monetary judgment. If the claim does not exceed $10,000, the employee can sue in federal district court.[1]

Relief

Since the FMLA civil service provisions do not specify what relief would be available in case of a violation, an aggrieved employee must rely on other laws, or on general legal principles, to obtain relief. For example, if an employee is demoted or fired or denied restoration, the employee can claim compensation due under the Back Pay Act.[2] The employee may also seek to recover the amount of benefits guaranteed by the FMLA that are unlawfully denied and are therefore due and owing from the government.

Future-Effective Changes Under the CAA

The CAA removes the Library, like GAO, from the civil service version of the FMLA in title 5 of the U.S. Code and places it under the private sector FMLA codified in title 29 of the U.S. Code.[3] The specific differences between the FMLA provisions in civil service law and the FMLA provisions applicable to the private sector are described in detail in the section of this study on GAO.

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[4] (...continued)
OMB has delegated the authority to settle employee claims to OPM.

[1] 28 U.S.C. 1346(a)(2), 1491(a).

[2] 5 U.S.C. 5596.

[3] Section 202(c) and (e)(1) of the CAA, 2 U.S.C. 1312(c), (e)(1).

EVALUATION

Substantive Rights

The Library is now covered by the same FMLA civil service laws and regulations as GAO, and is subject to the same CAA provision that will cause the private sector FMLA to apply in the future. The evaluation for GAO therefore applies in nearly all respects for the Library as well. That is, all of the relevant statutory programs provide the same basic entitlement — up to 12 weeks of job-protected leave in a 12-month period for family and medial purposes — with similar differences in eligibility criteria and substantive rights.

The civil service FMLA provisions afford greater substantive rights to employees than the private sector provisions, which are applicable under the CAA, but the civil service version of the FMLA does not provide administrative or judicial procedures.

Procedures

Administrative

The Library's administrative dispute resolution, grievance, appeal, and hearing processes are generally available, but these do not offer a process external to Library management. The negotiated grievance procedure with neutral arbitration is available to members of a bargaining unit. The provisions of the CAA that apply to the Library will not change this situation because the private sector FMLA provisions do not afford administrative remedies.

In comparison, the CAA provides administrative procedures, including the right to an adjudicatory hearing and appeal to the independent Office of Compliance Board, for a covered employee who alleges any FMLA violation.

Judicial

As discussed in the context of GAO, the civil service remedies and relief available under civil service law in a case of an FMLA violation are generally less protective of employee rights than those under the CAA and under private sector law.

FAIR LABOR STANDARDS ACT OF 1938
(FLSA)

Substantive Rights

Statutes

Employees of the Library have been covered under the Fair Labor Standards Act (FLSA) since the enactment of the Fair Labor Standards Amendments of 1974.[1] Thus, nonexempt employees must be paid a minimum wage rate, currently $4.75 per hour, and are entitled to overtime compensation, at a rate of at least time and one-half, for work in excess of 40 hours in a workweek. (Nonexempt employees are those who do not fall within one of the three statutory exemptions -- executive, administrative, or professional.)

In addition, since before 1974, most Library employees generally come under the premium pay provisions of the civil service laws, which establish overtime rates and authorize compensatory time off.[2] These statutory provisions also apply to GAO, and are described in the section of this study on GAO.

Regulations

Under a 1975 Memorandum with the Department of Labor, noted below, the Library agreed to follow the regulations and interpretations of the Wage and Hour Division in administering the application of the FLSA to its employees.

The Library is not subject to OPM's regulations implementing the overtime and compensatory time off provisions of the civil service laws, and the instrumentality has issued its own regulations for this purpose. [3] Library of Congress Regulation (LCR) 2013-11 (May 9, 1994) generally covers (with the exception of prevailing wage employees) the Library staff members, including employees who are otherwise exempt under the FLSA as well as employee are nonexempt under

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[1] 29 U.S.C. 203(e)(2)(A)(v), added by section 6(a) of Pub. L. No. 93-259, 88 Stat. 58 (April 8, 1974).

[2] 5 U.S.C. 5541(2)(C). *See* 5 U.S.C. 5542-5543.

[3] OPM, pursuant to its authority to promulgate regulations implementing the premium pay provisions of the civil service laws, title 5, issued the regulations found in 5 C.F.R. part 550, which includes regulations implementing the overtime and compensatory time off provisions of sections 5542 and 5543, of title 5, U.S.C. However, these overtime and compensatory time off regulations do not apply to the Library. *See* 5 C.F.R. 550.101(a)(1), which states that the subpart pertaining to premium pay applies "to each employee in or under an Executive agency, as defined in 5 U.S.C. 105." The Library is not an "Executive agency" under 5 U.S.C. 105.

the FLSA. This regulation implements the statutory requirement that overtime work must be ordered or approved; its sets forth both the manner in which overtime pay is calculated and the conditions under which overtime is to be paid; and it sets forth conditions under which compensatory time off may be given in lieu of overtime pay.

The Library issued LCR 2013-14 (May 9, 1994) to implement the civil service law covering employees who are entitled to be paid on the basis of a prevailing wage. In addition to establishing the rules for determining eligibility, the rates of pay, promotions, and premium pay for night shift work and holidays, the regulations provide that overtime is to be paid for ordered or approved work at a rate of one and one-half times the rate of an employee's basic pay. In addition, an employee may request, and the supervisor in his or her discretion may grant, compensatory time off in lieu of overtime pay.[1]

Procedures

Administrative

The 1974 FLSA Amendments authorized the Secretary of Labor and the Librarian of the Congress to enter into an enforcement agreement to provide for carrying out the Secretary's functions with respect to individuals employed in the Library. [2] A Memorandum of Agreement was executed in July 1975 setting forth the mutual responsibilities of both agencies. The Memorandum, among other things, provided that the Library will follow the published regulations and interpretations of the Wage and Hour Division in administering the FLSA; the Library will conduct internal investigations to resolve compliance problems; the Wage and Hour Division will refer complaints from Library employees to the Library for resolution; and the Library will submit an annual report of its activities to the Wage and Hour Division.

The Library has not promulgated FLSA-specific regulations for investigating and processing FLSA claims. However, several avenues of review are available. As described above, Library employees may use the agency's dispute resolution process. Furthermore, bargaining unit members may use negotiated grievance and binding arbitration procedures, and non-members of bargaining units may use the Library's administrative grievance and hearing procedures leading to a final decision by the Library.

Finally, insofar as FLSA claims constitute a monetary claim against the Federal government, an employee not satisfied with a determination of the Librarian may file a claim with OPM. [3]

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[1] The Library has advised that it plans to review its pay regulations and revise them if necessary.

[2] 29 U.S.C. 204(f), added by section 7(f) of Pub. L. No. 93-259, 88 Stat. 58 (April 8, 1974).

[3] The authority to settle claims against the Government has historically been assigned to the GAO (continued...)

However, while OPM has statutory authority to administer the FLSA with respect to most federal agencies, including GAO and GPO, its authority does not extend to the Library.[1]

Judicial

An action to recover any unpaid compensation owed under the FLSA may be brought in any court of competent jurisdiction.[2] FLSA actions by federal employees may be brought, under the Tucker Act, in the Court of Federal Claims or, if the amount claimed does not exceed $10,000, in an appropriate federal district court.[3]

Relief

Under the FLSA, Library employees are entitled to minimum wage and overtime compensation. Additionally, liquidated damages are available, in an amount equal to the amount of unpaid minimum wages or unpaid compensation, except that a court has discretion to reduce or dispense with the award of liquidated damages if the employer shows that the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation. For a violation of the FLSA prohibition against retaliation, legal or equitable relief may available, including employment, reinstatement, promotion, and the payment of lost wages, and an additional amount of liquidated damages.[4]

The FLSA also provides that the court shall allow reasonable attorneys fees.[5]

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[3] (...continued)
under 31 U.S.C. 3702. However, the Legislative Branch Appropriations Act, 1996, transferred this claims settlement authority to OMB as of June 30, 1996, subject to delegation. Pub. L. No. 104-53, 211, 109 Stat. 535-536 (1995), set out at 31 U.S.C. 501 note. OMB has delegated the authority to settle employee claims to OPM.

[1] *See* 29 U.S.C. 204(f); 5 C.F.R. 551.101(a). Under this authority with respect to other federal agencies, for example, OPM accepts employees' claims of violation, conducts investigations, makes determinations of whether employees are exempt or non-exempt, and issues compliance orders against employing agencies.

[2] 29 U.S.C. 216(b).

[3] *See* 28 U.S.C. 1346(a), 1491.

[4] 29 U.S.C. 216(b), 260.

[5] 29 U.S.C. 216(b).

EVALUATION

Substantive Rights

The Library is subject to the same substantive provisions of the FLSA governing minimum wage, overtime compensation, and child labor as GAO, GPO, and other agencies in the federal sector, as well as employers in the private sector, and employing legislative offices under the CAA. Furthermore, like GAO, the Library is covered by certain civil service statutes that supplement, and also provide exceptions to, the overtime pay requirements of the FLSA. Thus, while the civil service laws entitle Library employees to overtime for authorized work in excess of 8 hours a day, in addition to work in excess of 40 hours a week, the FLSA requires overtime for nonexempt employees (but not for exempt employees) for work only in excess of the 40 hour workweek (and without regard to whether the work was actually "authorized"). Certain employees are entitled to the benefit of the 8-hour day overtime premium even in instances where their workweek does not exceed 40 hours. Similarly, FLSA exempt employees are entitled to overtime for authorized work in excess of a 40 hour workweek. Furthermore, as described in the section of this study on GAO, the civil service laws that cover the Library frequently authorize the employer to satisfy overtime obligations by allowing compensatory time off. In contrast, the FLSA generally does not permit such time off for nonexempt employees. Similarly, compensatory time off is generally unavailable under the CAA, although it can be required under limited circumstances for employees whose schedules depend directly on the schedule of the House or Senate.

Procedures

Administrative

Pay disputes, including overtime matters under both the FLSA and the civil service laws, are resolved administratively through the Library's general grievance and dispute resolution processes. Employees can also apply to OPM for satisfaction of monetary claims. In contrast, the CAA generally does not authorize an internal administrative process for resolving FLSA disputes, but instead authorizes counseling, mediation, and formal adjudication, that is administered by the Office of Compliance (or, in the alternative, resort to district court).

Judicial Processes

Library employees may file a civil action under the FLSA regardless of whether the employee pursued any administrative complaint processing. In contrast, under the CAA, a covered employee can file a civil action only after pursuing his or her claim through the counseling and mediation stages, plus an additional waiting period of 30 days.

Jury trials are ordinarily not available against the federal government without express statutory

authority, [1] and therefore, are probably not available in FLSA cases against the Library. However, since a jury trial is available in appropriate FLSA cases in the private sector, the right is available to the same extent in FLSA cases under the CAA.[2]

Relief

The unpaid minimum wages, unpaid overtime compensation, additional liquidated damages, and legal or equitable relief for retaliation, as provided for in the FLSA, are available for a violation by the Library. This is the same relief as is available elsewhere in the federal sector, in the private sector, or under the CAA.

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[1] *See generally, Lehman v. Nakshian,* 453 U.S. 156 (1981).

[2] Section 408(c) of the CAA, 2 U.S.C. 1408(c).

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

Substantive Rights

The Library is currently covered by section 19 of OSHA,[1] as well as the related provisions of 5 U.S.C. 7902, which require the establishment and maintenance of a comprehensive occupational safety and health program. These provisions are the same as those applicable to GAO, and the requirements of these provisions are described in the GAO portion of this study.

Although the regulations promulgated by the Secretary of Labor are not binding on the Library, the applicable statutes require that the Library's OSHA program be consistent with the standards promulgated by the Secretary. The Library regulations and collective bargaining agreements that establish the Safety and Environmental Health Programs of the Library, as well as the Library of Congress Safety and Health Committee, cite the Secretary's standards as the authority and note the importance of conforming with them.[2]

Procedures

Administrative

Complaint procedures. The Library's employee complaint procedures to report unsafe conditions are currently in draft form, but Library officials have indicated that the procedures in the draft regulation are to be followed until final instructions are provided.[3] Employees are instructed to report unsafe conditions to their supervisor, or, if appropriate, to Safety Services. (Employees reporting unsafe conditions to Safety Services may remain anonymous.) If the appropriate Library officials determine that an unsafe or unhealthful working condition cannot be eliminated or reduced to an acceptable level within 30 days, a hazard abatement plan will be developed. This plan will explain the circumstances of the delay in abatement, and provide a proposed timetable for the abatement, and a summary of steps being taken in the interim to

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1 29 U.S.C. 668.

2 *See* LCR 1817-1, "Safety and Environmental Health Programs of the Library of Congress" (September 1994), and LCR 218-18, "Library of Congress Safety and Health Committee" (1995) (Draft) (both noting the importance of conforming with Executive Order 12196 and title 29 of the Code of Federal Regulations, Part 1960).

3 *See* LCR 1817-6, "Hazard Abatement Program to Ensure Safe Conditions for Library Employees" (September 1994) (Draft).

protect employees. A copy of the plan will be sent to the Joint Labor-Management Health and Safety Committee. Non-bargaining employees may also file safety and health grievances under the Library dispute resolution process,[1] while bargaining unit employees may use the negotiated grievance procedure.

Compliance mechanisms. The Library of Congress Safety and Health Committee was established to monitor and assist in safety and health programs.[2] The committee, which consists of equal representation of labor and management, assists Library management in improving policies, conditions, and practices that have potential impact on employee/workplace safety and health. In addition, a Hazard Abatement Program was established to monitor and track unsafe conditions until identified problems are corrected.[3]

Safety and occupational health inspections are conducted annually by the Safety Services staff and/or members of the Joint Labor-Management Advisory Committee. Situations that involve imminent danger must be brought to the immediate attention of supervisors or other persons with authority to correct the problem and to the service unit head for necessary action. Written inspection reports are then forwarded to the inspecting office within 30 days of the inspection report date. Written reports are maintained on file with Safety Services for five years. In addition, unsafe conditions are recorded in the Hazard Abatement Program database, and, in cases where personnel are exposed to unsafe or unhealthful working conditions, a Hazard Notice must be posted in the immediate vicinity. Safety Service's approval is required for all interim protective measures for unsafe conditions requiring more than 60 days to correct.

Judicial

Under current law no judicial remedies are available to Library employees to redress safety and health complaints.

Future-Effective Changes Under the CAA

Section 215 of the CAA applies the rights and protections of OSHA to the Library and to GAO, effective one year after this study is transmitted to Congress.[4] The applicable sections are described in the GAO portion of this study.

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1 *See* LCR 2020-7, "Policy and Procedures for Using the Alternative Dispute Resolution Process to Resolve Disputes" (June 6, 1995).

2 *See* LCR 218-18, "Library of Congress Safety and Health Committee" (1995).

3 *See* LCR 1817-6.

4 2 U.S.C. 1341(g)(2).

EVALUATION

Substantive Rights

The CAA will impose additional obligations on the Library. Under the CAA, the Library will be required to adhere to the safety and health regulations issued by the Board under section 215(d), whereas the Library's compliance with safety and health standards under OSHA is not now subject to enforcement by any entity outside of the Library. However, the Library already purports to conform with applicable federal laws and regulations, including Executive Order 12196 and 29 C.F.R. part 1960, which set out the basic program elements for federal employee occupational safety and health programs.

Retaliation

The CAA will provide Library employees with a right to bring a civil action for intimidation, discrimination or reprisal actions taken by an employing office because the employee has opposed a practice made unlawful by the CAA, or because the employee has initiated proceedings, made a charge, or testified, assisted, or participated in a hearing or proceeding under the CAA.[1]

Administrative

Under present law, the Library has an internal investigation and administrative grievance process to address safety and health complaints.[2] Under the CAA, however, the General Counsel of the Office of Compliance will exercise the authority to investigate and inspect places of employment, as well as issue citations and prosecute violations that are not corrected by the employing office named in the citation or notification.[3]

Library of Congress unions noted that they and management have cooperated regarding safety inspections and ergonomic issues, and that the Library's Safety Services Office has adopted an active safety program. However, the current exemption of the Library from OSHA provisions has caused occasional enforcement problems, and the control exercised by the Architect of the Capitol over most of the Library's buildings, including high-hazard areas, creates questions of who is responsible for correcting problems.

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[1] The general anti-reprisal provision in section 207 of the CAA prohibits retaliation against a covered employee for exercising rights under the CAA, including the rights and protections of section 215.

[2] *See* LCR 1817-6, "Hazard Abatement Program to Ensure Safe Conditions for Library Employees" (September 1994) (Draft) and LCR 2020-7, "Policy and Procedures for Using the Alternative Dispute Resolution Process to Resolve Disputes" (June 16, 1994).

[3] 2 U.S.C. 1341(c).

Record Keeping and Report Obligations

Section 668(a)(5) of title 29 requires agency heads, including the head of the Library of Congress, to submit annual reports to the Secretary of Labor on occupational accidents and injuries and on the agency programs established under section 668. Section 7902(e) of title 5 imposes similar record keeping and report requirements on each agency. However, there is no apparent mechanism for enforcement of these sections against federal agencies.

Section 215 of the CAA and the proposed requirements thereunder do not require employing offices to comply with these general safety and health record keeping requirements.[1] However, certain record keeping requirements that are part of the substantive safety and health standards under 29 C.F.R. parts 1910 and 1926, such as employee exposure records, are required.[2] The Office of Compliance Board has not addressed whether section 215 of the CAA and the regulations the Board proposes to implement thereunder can be harmonized with the preexisting statutory requirements otherwise applicable to the Library, but not within the scope of the CAA, that might independently apply to the Library.[3]

Judicial

Under present law no judicial remedies are available to Library employees, nor will the CAA provide employees with a judicial remedy. However, the CAA does afford employing offices and the General Counsel of the Office of Compliance certain appeal rights following a hearing or variance proceeding. These appeal rights are discussed in the section of this study on GAO.

Office of Compliance Inspection

The Office of Compliance General Counsel conducted inspections of the Library of Congress buildings in March of 1996. Based on the inspection tours, the General Counsel made the following finding: "The Library has an active and effective safety and health program staffed with knowledgeable personnel. . . . The safety and health staff of the Library, along with employee members of the safety and health committee, should be commended. Of the deficiencies noted in

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1 *See* Notice of Proposed Rule Making implementing section 215 of the CAA, 142 Cong. Rec. S11021 (daily ed. Sept. 19, 1996).

2 *See id.*

3 *See* 42 Cong. Rec. S 11019, S 11020 (daily ed. September 19, 1996) (NPRM implementing section 215) (citing Notice of Adoption of Regulations and Submission for Approval and Issuance of Interim Regulations under section 203 of the CAA 142 Cong. Rec. S224 (daily ed. Jan. 22, 1996) (declining to address issue of harmonizing regulations regarding overtime exemption for law enforcement officers under section 203 with preexisting statutory overtime exemption for Capitol Police under 40 U.S.C. 206b-206c)).

these buildings, almost none were in areas within control of the Library."[1]

[1] *See* "Report on Initial Inspections of Facilities for Compliance with Occupational; Safety and Health Standards Under Section 215," June 28, 1996, at III-57 (Office of Compliance publication).

LABOR-MANAGEMENT RELATIONS
(Chapter 71, Title 5 U.S.C.)

Substantive Rights

Because the Library is expressly included within the definition of employing "agency," Library employees are directly covered under the federal service labor-management relations statute in chapter 71 of title 5, U.S.C.[1] Thus, they have the right to choose whether to be represented by a labor organization for purposes of bargaining over terms and conditions of employment, they are protected against unfair labor practices (ULP) that may be committed by either an employing office or a labor organization, and their representatives may avail themselves of the provisions governing the resolution of grievances and of disputes over the negotiability of bargaining proposals. Further, the regulations promulgated by the Federal Labor Relations Authority (FLRA) apply to the Library.

Procedures

Administrative

The Federal Labor Relations Authority, an independent agency in the executive branch, is responsible for administering chapter 71. The FLRA conducts elections and other proceedings to decide issues of representation, and it rules on whether unfair labor practices have been committed and orders appropriate relief. The Authority's General Counsel is responsible for investigating and prosecuting such unfair labor practice cases before the FLRA.

In the event of a collective bargaining impasse, the Federal Mediation and Conciliation Service (FMCS) provides mediating services to facilitate the reaching of an agreement. Where agreement is not reached, the parties may present the issue for resolution to the Federal Services Impasses Panel, which operates as an adjunct to the FLRA.

Judicial

Decisions of the FLRA are judicially reviewable by U.S. Courts of Appeals.

EVALUATION

Substantive Rights

Insofar as the CAA applies the rights, protections and responsibilities of chapter 71 to employing offices of the legislative branch, subjecting the Library to the CAA in lieu of chapter 71 would not

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[1] 5 U.S.C. 7103(a)(3).

result in significant changes in the substantive rules governing labor-management relations.

Procedures

Administrative

Bringing the Library under the coverage of the CAA would afford the Library and its employees an administrative mechanism closely modeled after the procedures of Federal Labor Relations Authority. Under the CAA, the Board of Directors exercises the authority to conduct representation cases and to decide unfair labor practices. Legal questions on such matters as the appropriateness of bargaining units, exclusions from bargaining units, and whether representation elections were conducted free of objectionable conduct are decided by the Board. The General Counsel of the Office of Compliance exercises the authority to investigate and prosecute unfair labor practice allegations before a hearing officer, who issues a written decision within 90 days of determining whether the allegations have merit and if so, what remedies are appropriate. Hearing officer decisions may be appealed to the Board of Directors.

Judicial

Decisions of the FLRA under chapter 71 are reviewable by appropriate U.S. Courts of Appeals, while decisions of the Board of Directors of the Office of Compliance under the CAA are reviewable by the U.S. Court of Appeals for the Federal Circuit.

WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)

Substantive Rights

The Worker Adjustment and Retraining Notification Act (WARN Act) does not currently apply to the Library or its employees. The WARN Act assures employees in the private sector of notice in advance of office or plant closings or mass layoffs.[1]

Either under Library regulations [2] or collective bargaining agreements, the Library is generally obligated to provide advance notice to employees affected by a reduction in force (RIF). This notice period is longer than the 60 days ordinarily guaranteed under the WARN Act.

Procedures

Administrative

Bargaining unit members at the Library may submit a claim alleging a violation of notice requirements under negotiated grievance procedures, and non-members of bargaining units may submit such a claim under the Library's administrative grievance procedures.

Future-Effective Changes Under the CAA

Section 205 of the CAA applies the rights and protections of the WARN Act to the Library and GAO employees, effective one year after this study is transmitted to Congress.[3]

EVALUATION

For the reasons discussed in the GAO and GPO sections of this study, the right to advance notice established in the Library's RIF regulations are, in most respects, as extensive as, or more extensive than, the rights afforded under WARN Act provisions made applicable by the CAA. However, unlike the notice rights under the Library regulation, the notice rights under the CAA

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1 *See* 29 U.S.C. 2101-2109.

2 Section 4 of LCR 2021-2, "Policies and Procedures in a Reduction-in-Force for Non-Bargaining Unit Staff Members and Staff Members in Bargaining Unit Positions in the Law Library" (September 30, 1981).

3 2 U.S.C. 1315(a)(2), (d)(2).

are provided for by statute and can be enforced by the filing of a civil action.

Administrative and Judicial Procedures

Only administrative processes are available in a case where a Library employee is affected by a RIF, including where notice requirements were not met. After the WARN Act provisions of the CAA go into effect, a Library employee who alleges a violation may elect to pursue an administrative complaint and appeal through the Office of Compliance, or may file a civil action. As a jury trial should be available to private sector employees[1] and any party under the CAA "may demand a jury trial where a jury trial would be available in an action against a private defendant,"[2] a covered employee may request a jury trial under the CAA as well.

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[1] *See Bentley v. Arlee Home Fashions, Inc.*, 861 F.Supp. 65 (E.D. Ark. 1994).

[2] Section 408(c) of the CAA, 2 U.S.C. 1408(c).

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA)

Substantive Rights

The Library is covered by the substantive provisions of USERRA, which apply throughout the federal government, and which are described in the section of this study on GAO.[1] Like other employers that are part of the legislative branch, the Library is authorized under USERRA to determine that it is "impossible or unreasonable" to reemploy a person otherwise entitled to reemployment, in which case OPM shall ensure that the person is offered alternative employment of like seniority, status, and pay at a federal executive agency.[2]

Like GPO, but unlike GAO, the Library is excluded from coverage by OPM's authority to establish regulations implementing the provisions of USERRA, which applies only to Federal executive agencies.[3] The Library has issued a regulation governing reemployment rights of veterans, but the Library has indicated that the regulation is out of date and will be revised.

Procedures

Administrative

As was described in the section on GAO, an employee may invoke the investigation and informal compliance efforts by the Labor Department.[4] However, Library employees (like those at GPO, but unlike those at GAO) are not entitled to use the other federal sector administrative procedures under USERRA — representation by the Office of Special Counsel, and adjudication of a complaint before the MSPB — which apply only to "Federal executive agencies."[5]

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1 *See* 38 U.S.C. 4303(4)(A)(ii), (5), 4313, 4314.

2 *See* 38 U.S.C. 4314(a), (c).

3 Pursuant to 38 U.S.C. 4303(5), 4331(b)(1), OPM's regulations apply with regard to any "Federal executive agency," which does not include the Library. *See also* 5 C.F.R. 353.102(2) (scope of application of OPM regulations).

4 *See* 38 U.S.C. 4314(c), 4322.

5 *See* 38 U.S.C. 4303(5), 4324.

Library employees may use the agency's dispute resolution process, described above, and a member of a bargaining unit may submit a complaint under the negotiated grievance procedure and a non-member may proceed under the Library's administrative grievance or appeals procedures.

Judicial

Employees of the federal government, unlike those in the private sector, have no right to file a civil action under USERRA.[1]

Future-Effective Changes under the CAA

The Library, like GAO but unlike GPO, is also covered by section 206 of the CAA, which makes the rights and protections of USERRA applicable, effective one year after this study is transmitted to Congress.[2]

EVALUATION

Substantive Rights

The Library is subject to the substantive provisions of the USERRA, which apply throughout the federal government and are also made applicable under the CAA.

Procedures

The Library's administrative dispute resolution processes are generally available for Library employees, but these procedures do not offer a process independent of Library management. The negotiated grievance and arbitration procedure is also available, provided the employee is a member of a bargaining unit.

In comparison, the CAA provides administrative procedures, including the right to an adjudicatory hearing and appeal to the independent Office of Compliance Board, for any alleged USERRA violation. The CAA also provides the right to file a civil action, which is not now available to Library employees under the USERRA.[3] After CAA coverage of the

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[1] *See* 38 U.S.C. 4324.

[2] 2 U.S.C. 1316(a)(2)(B), (C), (d)(2).

[3] Employees of private employers or state governments may also commence a civil action under the USERRA, or the Attorney General may commence a civil action on behalf of

(continued...)

Library goes into effect, Library employees alleging violations of USERRA will become entitled to use the procedures provided by the CAA.

[3] (...continued)
these employees. *See* 38 U.S.C. 4323.

EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988 (EPPA)

The Employee Polygraph Protection Act (EPPA) of 1988 does not apply to the Library or its employees, nor does this legislation apply to any federal employers except as made applicable by the CAA and similar law.[1] EPPA restricts employers' use of lie detector tests of their employees.

Effective one year after this study is transmitted to Congress, section 204 of the CAA will grant the rights and protections of the EPPA to employees of the Library, as it does to GAO employees.[2]

EVALUATION

Under presently effective law, no rights and protections of EPPA are applicable to the Library and its employees. In the future, however, Library employees will be afforded the same EPPA rights and protections as other employees covered under the CAA, including the right to use the administrative and judicial procedures of the CAA to obtain redress in case of a violation.

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1 *See* section 414 of the Presidential and Executive Office Accountability Act, Pub. L. No. 104-331, 110 Stat. 4053 (Oct. 26, 1996).

2 2 U.S.C. 1314(a)(2), (d)(2).

THE AMERICANS WITH DISABILITIES ACT OF 1990
(Public Access Provisions)

Substantive Rights

Titles II and III of the ADA, which relate to public access to public services and public accommodations,[1] are applicable in their entirety to certain congressional instrumentalities, including the Library, under section 509 of the ADA.[2] The substantive provisions are described in the section of this report on GAO.

Procedures

Section 509(2) of the ADA currently requires certain instrumentalities, including the Library, to "establish remedies and procedures to be utilized with respect to the rights and protections" of the ADA made applicable.[3] The Library has provided that members of the public who allege violation of the public access requirements may file a complaint with the Associate Librarian for Constituent Services.[4] However, the ADA public access provisions now in effect do not provide judicial processes in case of a complaint against the Library.

Future-Effective Provision Under the CAA

Section 509(6) of the ADA will make the remedies and procedures of section 717 of Title VII available to visitors, guests, and patrons of the Library, as well as GAO and GPO, who wish to pursue claims under the public access provisions of the ADA, effective one year after this study is transmitted to Congress. The administrative and judicial procedures to be provided under section 509(6) are described in the portion of this study on GAO.

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1 Sections 201-245 and 301-309 of the ADA, 42 U.S.C. 12141-12165, 12181-12189.

2 42 U.S.C. 12209(1).

3 42 U.S.C. 12209(2).

4 Library of Congress, "Interim Policies, Procedures, and Remedies to Implement Pub. L. No. 101-336 [ADA]," section 9(B) (undated).

EVALUATION

The evaluation in the section of this study on GAO applies as well for the Library. In general terms, section 509(6) establishes a process under which a visitor, guest, or patron may pursue a complaint individually through an administrative complaints process administered by the agency and then, if not satisfied, may file a civil action in district court.

The CAA does not provide a visitor, guest, or patron of the Library the right to file a civil action or to pursue an administrative remedy on his or her own. Instead, the CAA adopts an enforcement-based process. An individual may file a charge with the General Counsel of the Office of Compliance, who investigates and may pursue an administrative complaint on the individual's behalf.

CONCLUSIONS

Substantive Rights

Library employees currently are granted substantive rights under most CAA laws, and, one year after this study is transmitted to Congress, the CAA will extend the substantive rights under additional laws to fill most remaining gaps in substantive coverage. In addition, Library employees enjoy civil service protections in a number of areas, whether guaranteed by statute or established administratively by regulation and collective bargaining agreements, extending beyond the scope of the rights and protections applied by the CAA. Two Library unions commented that generally the "written protections" at the Library are roughly equivalent to protections applying to other federal workers, but that there is a problem with the lack of effective enforcement of those standards.

Administrative Processes

Administrative procedures applied by the Library or established under collective bargaining agreements are available to resolve Library employees' complaints and grievances on a wide range of subjects. However, Library employees have no right to appeal administratively from the Librarian's final decision on discrimination complaints or adverse actions. (Bargaining unit members can secure the decisions of a neutral arbitrator.) Furthermore, while the Library provides for investigation of discrimination complaints, and hearings before a neutral hearing examiner, no outside agency has authority to investigate or take enforcement action. Nor does an outside agency now have authority to investigate or take enforcement action regarding occupational safety and health, although the Library will come under the jurisdiction of the Office of Compliance with respect to OSHA and certain other laws, effective one year after this study is transmitted to Congress. The Library currently is subject to the jurisdiction of the FLRA in labor-management matters.

Judicial Processes and Relief

Library employees now have, or will be granted under the CAA, rights to use judicial procedures that are comparable to rights available to covered Congressional employees under the CAA. However, under certain applicable laws, the right to a jury trial and to recover certain kinds of relief are not available to Library employees. For example, Library employees, like executive branch employees, arguably may not request a jury trial in cases under the ADEA, EPA, or FLSA, and may not recover compensatory damages under 42 U.S.C. 1981 or liquidated damages under the ADEA. Nor will the CAA extend these remedies to Library employees.

Independent Process for Issuing Substantive Regulations

For the subject areas within the scope of the CAA, substantive rights of Library employees are generally defined not by Library regulation, but by statute or government-wide regulations adopted by executive branch agencies and, in the future, by the Office of Compliance Board. With respect to general civil service protections, such as merit hiring and the conduct of RIFs, the Library has exercised considerable authority to promulgate substantive regulations, and Library

unions assert the right to bargain collectively about the terms of such regulations.

The study also identified several issues regarding the Library that warrant further discussion:

Administrative Processes for Discrimination Complaints

Employees of the Library — alone among the instrumentalities — have no administrative avenue for appeal from a final decision by the head of the agency on a discrimination complaint. The Library has suggested that its employees be authorized to use the administrative procedures of the Office of Compliance under the CAA, after first having used the EEO procedures of the Library for a period up to 180 days.

Two employee unions responded with support for the general concept of authorizing appeals to the Office of Compliance. However, instead of the application of CAA procedures, the unions advocate the application of EEO procedures like those at executive branch employing agencies, except that administrative appeal to the Office of Compliance would be substituted for appeal to the EEOC. The unions commented that, for most complainants, the investigatory process that the Library's EEO office is supposed to undertake are far more important than remedies before a hearing officer. Such investigation is provided under the Library's current procedures, as it is under executive branch procedures, but is not required under the CAA.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

The Library is now subject to the FMLA provisions in civil service law, codified in title 5 of the U.S. Code, and by OPM regulations implementing those provisions. However, section 202(c) of the CAA transfers coverage of the Library from the civil service provisions to the private sector provisions of the FMLA (codified in title 29 of the U.S. Code), effective as of one year after this study is transmitted to Congress. Section 202(c) will grant employees a private right of action that is unavailable for FMLA violations under civil service law, but will also reduce substantive FMLA protections, which are stronger under civil service law than in the private sector.

Section 202(c) covers GAO as well as the Library, and both instrumentalities recommended that section 202(c) be rescinded, because they have already established their FMLA leave systems in conformity with title 5 requirements and within the parameters of the general federal leave system, and a shift to title 29 will be administratively disruptive without serving a significant public purpose. Two Library union locals likewise recommended that coverage be retained under title 5, because title 29 provides exemptions tailored to the private sector that are not appropriate to civil service employment. These unions also stated that the right to sue for civil damages under title 29 would be "a rather extraordinary remedy when extended to federal employees," and that "administrative remedies that are typically available to federal employees would appear to be a more appropriate response to" an FMLA violation. On the other hand, section 202(c) furthers the general principle, expressed by Congress in enacting the CAA, that private sector law should apply to the legislative branch.

The Library also suggested that its employees who allege any FMLA violations be able to seek a

remedy by using the procedures prescribed in the CAA. The result would be a hybrid arrangement favorable to Library employees — substantive rights more protective than those afforded to covered employees under the CAA, and judicial procedures more favorable than those afforded to most federal sector employees under civil service statutes.

LABOR-MANAGEMENT RELATIONS (CHAPTER 71)

Labor-management relations at the Library are governed by Chapter 71 and implemented by the FLRA. The Library has recommended that legislation be enacted to place it instead under the labor-management program of the CAA. The three unions of Library employees disagree with this recommendation.

The Library does not assert that the rights, protections, procedures, and relief afforded Library employees in the labor-management relations area are not now comprehensive and effective, or that placing the Library under the CAA would make them more so. Rather, due to the special relationship between the Library and Congress, the Library suggested that it should come under the Office of Compliance's authority with respect to most of the laws made applicable by the CAA, and urged that the Library be included under the labor-management provisions of the CAA so as to achieve an integrated approach to employment matters administered by a single body. The Congressional Research Service (CRS), a division of the Library, presented a somewhat different rationale: that it is anomalous and raises separation-of-powers concerns for labor relations issues involving CRS, a legislative entity, to be resolved by the FLRA, an agency in the executive branch.

The three unions of Library employees urged that application of Chapter 71 to the Library not be changed. Comments from unions stated that collective bargaining under Chapter 71 has functioned effectively at the Library for nearly 20 years, and shifting coverage to the CAA would be disruptive. A union questioned whether the Office of Compliance would have the resources necessary to provide the services required by the Library and its labor organizations. Furthermore, certain of these commenters raised separation-of-powers concerns that they say actually argue against placing the Library under the Congressional employment system, because the Library exercises certain executive functions, especially in the area of copyright. Even CRS employees are unlike Congressional employees, a union explained, in that they are career merit employees, for whom collective bargaining affords essential protection against partisan and ideological pressures.

ADA PUBLIC ACCESS PROVISIONS

In case of a dispute over accessibility by visitors, guests, or patrons, section 210(g) of the CAA establishes a private right of action in United States district court after there has been resort to an administrative process in the Library. This provision will be effective one year after this study is submitted to Congress.

Section 210(g) applies as well to GAO and GPO. However, the Library is unique among the

three instrumentalities in that the Architect of the Capitol has responsibilities with respect to Library facilities and would have a role in correcting certain access violations. The Architect, however, is not covered by section 210(g). For the Architect, as for the House and Senate, charges concerning access are considered in an administrative process under the Office of Compliance, with judicial review to the U.S. Court of Appeals for the Federal Circuit.

The Library recommends that legislation be enacted to shift the remedial system, insofar as it concerns the Library, from private enforcement through civil action to enforcement through the Office of Compliance. Because of the Architect's pervasive role, this recommendation is intended to promote an integrated approach that avoids fragmentation of procedures and responsibility.